UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,450	02/25/2004	Michael Jack Zakharoff	ID-911 (80235)	4905

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EXAMINER
KEEHN, RICHARD G

ART UNIT	PAPER NUMBER
2152	

NOTIFICATION DATE	DELIVERY MODE
07/24/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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	Application No.	Applicant(s)
Office Action Summary	10/786,450	ZAKHAROFF, MICHAEL JACK
	Examiner	Art Unit	
	Richard G. Keehn	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 May 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-30</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-30</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on <u>25 February 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>2/25/2004</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

Claims 1-30 have been examined and are pending.

This office action is in response to arguments submitted 5/9/2008.

This office action is Non-Final.

Response to Arguments

1.   In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

2.   In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

3.   Applicant's arguments with respect to claims 1, 10, 17 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4.   The text of those sections of Title 35, U.S. Code 103 (a) not included in this

action can be found in a prior Office action.

5.   Claims 1-2, 4-6, 8-11, 13-15, 17-18, 20-22, 24-25 and 27-29 are rejected under

35 U.S.C. 103(a) as being unpatentable over US 6,282,565 B1 (Shaw et al.), and

further in view of US 2004/0236966 A1 (D'Souza et al.).

As to Claims 1, 10, 17 and 24, Shaw et al. disclose an invention substantially as

claimed, including a communications system, delivery server, electronic mail

communications method and computer-readable medium having computer-executable

instructions for performing steps, hereafter referred to at the "system", comprising:

at least one destination server for hosting a plurality of electronic mail (email)

message boxes (Shaw et al. – Figure 1, Item 110 recites the Incoming Email Server);

a plurality of communications devices for generating email messages each

associated with a respective message box (Shaw et al. – Figure 1, items 171, 173, 175,

161, 162 and 16n recite communications devices generating email messages with user

mailboxes); and

a delivery server comprising a plurality of queues and a controller for (Shaw et al.

– Figure 1, items 100, 140, 151, 153 and 155 recite the Enterprise Email System, Email

Queuing and Mailbox System comprising mail queues);

moving email messages stored in said first queue to a second queue based upon

a delivery failure (Shaw et al.—Column 11, lines 40-46 recite the email message being

rerouted based on delivery timeout), and

the email messages generated by said communications devices (Shaw et al. –

Column 1, lines 36-39 recite email messages being generated by users); and

with a successfully delivered email message (Shaw et al.—Column 11, lines 40-

46 recite the email message being rerouted based on status of delivery timeout).

Shaw et al. do not disclose, but D'Souza et al. disclose an invention substantially

as claimed, including

storing [*sic*] in a first queue, and attempting to send [*sic*] to said at least one

destination server at a first sending rate (D'Souza et al. – Page 2, ¶ [0028] recite the

decision engine storing packets in a faster send rate queue if the source address is

found or a slower send rate queue if the source address is not found. ¶ [0029] recites

that there can be multiple levels of queues with gradually slower send rates. Figure 3

recites sending at multiple rates depending on which queue the packet is placed into),

attempting to send [*sic*] stored in said second queue to said at least one

destination server at a second sending rate less than the first sending rate (D'Souza et

al. – Page 2, ¶ [0028] recite the decision engine storing packets in a faster send rate

queue if the source address is found or a slower send rate queue if the source address

is not found.), and

moving [*sic*] from said second queue to said first queue having a common characteristic (D'Souza et al. - Page 2, ¶ [0030] recites the common characteristic of status of whether the source address is known).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine sending data at fast, then gradually slower sending rates and moving data to be sent into queues based on send rate, both up in rate and down taught by D'Souza et al., with a delivery server comprising a plurality of queues and a controller for moving email messages stored in said first queue to a second queue based upon a delivery failure taught by Shaw et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to mitigate the effects of transmission flooding by those deemed to have adverse effect on communication throughput (D-Souza et al. - ¶ [0014]).

As to Claims 2, 11, 18 and 25, the combination of Shaw et al. and D'Souza et al. discloses an invention substantially as claimed, including the system of Claims 1, 10, 17 and 24 respectively, wherein the delivery failures are based upon a failure to deliver email messages to respective message boxes (Shaw et al.—Column 11, lines 40-46 recite the email message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises a common message box (D'Souza et al. - Page 2, ¶ [0030] recites the common characteristic of status of whether the source address is known).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 4, 13, 20 and 27, the combination of Shaw et al. and D'Souza et al.

discloses an invention substantially as claimed, including the system of Claims 1, 10, 17

and 24 respectively, wherein said controller stores directly in said second queue email

messages generated by said communications devices sharing the common

characteristic with an email message already stored in said second queue (D'Souza et

al. – Page 2, ¶ [0028] recites direct storage into the slower queue based on the

common status of unknown source address; Shaw et al. discloses email messages as

previously discussed).

The motivation and obviousness arguments the same as in Claim 1.

As to Claims 5, 14, 21 and 28, the combination of Shaw et al. and D'Souza et al.

discloses an invention substantially as claimed, including the system of Claims 1, 10, 17

and 24 respectively, wherein said second queue comprises a plurality thereof arranged

in a hierarchy each having a respective storage interval associated therewith (D'Souza

et al. – Page 2, ¶¶ [0028 – 0029] recite multiple classes of queues being serviced from

highest to lowest rate),

the storage intervals successively increasing from a highest queue in the

hierarchy to a lowest queue (D'Souza et al. – Page 2, ¶¶ [0028 – 0029] recite multiple

classes of queues being serviced from highest to lowest rate);

wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure (Shaw et al.—Column 11, lines 40-46 recite the email message being rerouted based on delivery timeout); and

wherein said controller moves email messages stored in a higher queue in the hierarchy to a next lower queue in the hierarchy after being stored in said higher queue for the storage interval thereof (Shaw et al.—Column 11, lines 40-46 recite the email message being rerouted based on delivery timeout).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6, 15, 22 and 29, the combination of Shaw et al. and D'Souza et al. discloses an invention substantially as claimed, including the system of Claims 5, 14, 21 and 28 respectively, wherein said controller attempts to send messages from each of said queues in the hierarchy at successively decreasing sending rates from said highest queue to said lowest queue (D'Souza et al. – Page 2, ¶ [0029] recites multiple classes of queues between fastest to slowest).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 8, the combination of Shaw et al. and D'Souza et al. discloses an invention substantially as claimed, including the communications system of Claim 1 wherein at least one of said plurality of communications devices comprises a wireless communications device (Shaw et al. – Column 1, lines 22-27 recites internet which one

of ordinary skill in the art at the time the invention was made would know to include

wireless devices such as phones (line 17), pda's, laptops etc.).

As to Claim 9, the combination of Shaw et al. and D'Souza et al. discloses an

invention substantially as claimed, including the communications system of Claim 1

further comprising a wide area network (WAN) connecting said at least one destination

server and said delivery server (Shaw et al. – Column 1, lines 22-27 recites internet

which one of ordinary skill in the art at the time the invention was made would know to

include wide area networks).

6.   Claims 3, 12, 19 and 26 are rejected under 35 U.S.C. 103(a) as being

unpatentable over the combination of Shaw et al. and D'Souza et al. as applied to

claims 1, 10, 17 and 24 above respectively, and further in view of US 2003/0145106 A1

(Brown).

As to Claims 3, 12, 19 and 26, the combination of Shaw et al. and D'Souza et al.

discloses an invention substantially as claimed, including the system of Claims 1, 10, 17

and 24 respectively,

wherein the delivery failures are based upon a failure to deliver email messages

to said destination servers (Shaw et al.—Column 11, lines 40-46 recite the email

message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises having respective message boxes

hosted by a common destination server (D'Souza et al. – Page 2, ¶ [0028] recites direct

storage into the slower queue based on the common status of unknown source

address).

The combination of Shaw et al. and D'Souza et al. does not explicitly disclose,

but Brown discloses an invention substantially as claimed, including wherein said at

least one destination server comprises a plurality of destination servers (Brown – Page

2, paragraph [0026] recites the group of email servers).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine wherein said at least one destination server comprises

a plurality of destination servers taught by Brown with at least one destination server for

hosting a plurality of electronic mail (email) message boxes taught by the combination

of Shaw et al. and D'Souza et al.

One of ordinary skill in the art at the time the invention was made would have

been motivated to provide an intermediary to improve network traffic flow (Brown –

Page 1, paragraphs [0005-0007]).

7.   Claims 7, 16, 23 and 30 are rejected under 35 U.S.C. 103(a) as being

unpatentable over the combination of Shaw et al. and D'Souza et al. as applied to

claims 5, 14, 21 and 28 above respectively, and further in view of US 5,632,011

(Landfield et al.).

As to Claims 7, 16, 23 and 30, the combination of Shaw et al. and D'Souza et al. discloses an invention substantially as claimed, including the system of Claims 5, 14, 21 and 28 respectively.

The combination of Shaw et al. and D'Souza et al. does not disclose, but Landfield et al. discloses an invention substantially as claimed, including wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof (Landfield et al. – Column 2, lines 12-22 recite the deletion of undeliverable messages from the queue. The fact that it is determined undeliverable is the same as the applicant's determination on non-deliverability based on failure to deliver at the lowest queue).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof taught by Landfield et al., with wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure taught by the combination of Shaw et al. and D'Souza et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve management of email by allowing undeliverable emails to be discarded (Landfield et al. – Column 1, lines 56-61).

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. These include:

- US 2003/0061287 A1 – Method and System for Delivering Files in Digital File

  Marketplace

- US 2005/0204002 A1 – Dynamic Online Email Catalog and Trust Relationship

  Management System and Method

- US 2005/0091318 A1 – Enabling a Sender to Control Future Recipients of an

  Email

- US 2007/0203994 A1 – Communications System Providing Message

  Aggregation Features and Related Methods

- US 2005/0063005 A1 – Integrated Document Delivery Method and Apparatus

- US 6,675,215 B1 – Automatic Baud Rate Detection of Null Modem Unimodem

  Client Connection

- US 2002/0046250 A1 – Certified and Registered Electronic Mail System

- US 2005/0114453 A1 – Pseudonymous Email Address Manager

- US 2002/0133618 A1 – Tunneling System for a Cable Data Service

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Richard G. Keehn whose telephone number is 571-270-

5007. The examiner can normally be reached on Monday through Thursday, 8:30am -

7:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Dohm Chankong/
Examiner, Art Unit 2152